THE HON'BLE SRI JUSTICE K.C.BHANU
CRIMINAL APPEAL No. 1319 OF 2002

JUDGMENT:

1. The appellant/complainant preferred this Criminal Appeal against the judgment dated 20.08.2002 in C.C. No. 53 of 2000 on the file of the XVIII Metropolitan Magistrate, Hyderabad, whereunder and whereby the respondents 1 to 3 /A.1 to A.3 were acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. The brief facts that are necessary for disposal of the present appeal may be stated as follows.

The first accused company through its Director, approached the complainant company for purchase of Maruti van on hire purchase basis. The accused issued cheque dated 5.7.1999 drawn on Bombay Mercantile Co-operative Bank, Hyderabad signed by its Director. When the said cheque was presented for collection, it was dishonoured with a memo dated 6.11.1999. After issuance of the statutory notice, when the accused failed to repay the amount, the present complaint is lodged.

3. When the respondents were examined under Section 251 Cr.P.C., they pleaded not guilty and claimed to be tried.

4. To substantiate its case, the complainant examined P.Ws. 1 and 2 and got marked Exs.P1 to P13. On behalf of accused, no oral evidence was examined, but Ex.D1 was marked.

5. The trial Court, upon appreciation of the evidence on record, held that there was no legally enforceable debt and accordingly acquitted the accused. Challenging the same, the present appeal is preferred by the complainant.

6 . Now the point for determination is whether the

prosecution proved its case against the respondents 1 to 3/A.1 to A.3 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and whether the judgment of the trial court is correct, legal and proper ?

7. The learned counsel for the appellant contended that Ex.P2, the cheque in question, was issued prior to seizure of vehicle and the accused were admittedly liable to pay the amount covered by Ex.P2-cheque. Hence, he prayed to set aside the order of acquittal.

8. While dealing with the order of acquittal, though the appellate Court has got full power to re-appreciate the evidence, but it will be slow in interfering with the same in view of the fact that there is a presumption under law that the accused is presumed to be innocent unless contrary is proved and that presumption of innocence is further strengthened by an order of acquittal. Unless there are compelling or substantial reasons, normally this court would not interfere with the order of acquittal.

9. Now, the point to be decided in this appeal is whether there was a legally enforceable debt as on the date of filing of the complaint or not. To constitute an offence incorporated in the main enacting clause of Section 138 of the Negotiable Instruments Act, the following three conditions have to be established:

a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

b) The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in

writing, to the drawer of the cheque (within thirty days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

The factual matrix is not in dispute. According to the complainant, Ex.P2-cheque was given by the accused for discharge of monthly instalments of the loan and the cheque was dishonoured. P.W.1 admitted that, after seizure of the vehicle, he is not entitled to keep the remaining cheques and the present the same for encashment. Admittedly, the vehicle was seized on 30.9.1999. He also admitted the extract of accounts as in Ex.D1 as true and correct. Admittedly, the cheque in question Ex.P2 was presented in the month of November, 1999 i.e. two months after the seizure of the vehicle. Therefore, by the date of presentation of the cheque, the complainant was not having any right to encash the cheque in view of the fact that the vehicle in question was seized and sold. The trial Court, upon appreciation of the evidence on record in right perspective, rightly acquitted the respondents. There are no compelling or substantial reasons to interfere with the impugned judgment.

10. The Criminal Appeal is devoid of merit and is, accordingly, dismissed.

(K.C.Bhanu, J.)

23.12.2009
Drk

THE HON'BLE SRI JUSTICE K.C.BHANU

CRIMINAL APPEAL No. 1319 OF 2002

Date: 23.12.2009

Between:

M/s. Gowra Leasing & Finance Ltd., rep. by
Authorised signatory L.Vinod

…Appellant

And

M/s. Jumbo Speed Mail Services (P) Ltd.,
& others

…Respondents

THE HON'BLE SRI JUSTICE K.C.BHANU

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